

REMARKS

Rejection of Claims 1, 2, 7, and 10-11 as anticipated.

Applicants traverse the rejection of claims 1, 2, 7 and 10-11 as anticipated by Schoenbach et al. Schoenbach et al., as understood by the applicants, does not teach performing cosmetic surgery by application of a pulsed electric field having a voltage above the upper electroporation limit of subcutaneous fat cells. Schoenbach et al. is believed to teach away from the invention recited in those claims. Thus, Schoenbach et al. states in the Summary of the Invention:

The present invention relates to a method for modifying cells by intracellular electro-manipulation. The method includes applying one or more ultrashort electric field pulses to target cells. The ultrashort electric field pulse generally has at least a sufficient amplitude and duration when applied as a sequence of pulses to **modify subcellular structures in the target cells. The amplitude of individual pulses do not exceed the irreversible breakdown field of the target cells. The amplitude and duration of the ultrashort electric field pulse(s) are typically chosen so as to be insufficient to permanently alter permeability of surface membranes of the target cells, e.g., by rupturing the surface membranes.**

(Col. 2, ll. 63-Col. 3, ll. 7. Emphasis Added.)

Claim 1 recites, in part, as follows: "An apparatus for cosmetic treatment comprising: ...a power supply for generating high voltage pulses for applying a pulsed electric field to the skin and subcutaneous tissues, said pulses having a voltage above the

upper electroporation limit of subcutaneous fat cells in the treated volume for the predetermined volume". Thus, while Schoenbach et al. teaches treatment of cells by application of electric field pulses with amplitudes "below the irreversible breakdown field of the target cells", *supra*, and "[t]he amplitude and duration of each ultrashort electric field pulse can be chosen so that it is insufficient to alter permeability of surface membranes of the target cells, e.g., by inducing pores in the cell membranes," Col. 7, ll. 60-63, while applicants' claim recite the use of pulses with voltages above the upper electroporation limit of fat cells, that is, with voltages that will induce pores in the cell membranes that lead to cell death. Claims 1, 2 and 7 are not anticipated by Schoenbach et al. and are allowable.

Similarly, claims 10 and 11 recite a "method for cosmetic treatment in lieu of cosmetic surgery, weight loss and/or body sculpturing comprising: ...applying a pulsed electric field to the area to be treated via said electrodes with an amplitude sufficient to cause death to subcutaneous fat cells having a predetermined minimum size." Schoenbach et al. does not anticipate this claim. Claims 10 and 11 are allowable.

Nevertheless, to forward the progress of the present application to issuance, Applicants have amended claim 1 to recite the allowable subject matter of claim 5, and have consequently canceled claims 5-6 and 10-11. Claims 1-4, and 7 are allowable as amended.

Rejection of claims 8 and 9 as anticipated

Applicants traverse the rejections of claims 8-9 as anticipated by U.S. Patent No. 5,778,894 to Dorogi et al. Dorogi et al. does not include any illustrations of an apparatus, thus requiring the rejection of the claims as anticipated to be based solely upon the text of the patent. Applicants do not understand Dorogi et al. to recite the invention claimed in claim 8. The only description of an apparatus found in Dorogi et al. is at column 2, beginning at line 4 and extending at most to line 39. That text does not specifically recite apparatus to generate a high pulsed magnetic field. Dorogi et al. does not anticipate claims 8 and 9. Nevertheless, to forward the progress of this application, claims 8-9 have been canceled without prejudice.

Rejection of claims 3 and 4 as obvious.

Applicants traverse the rejection of claims 3 and 4 as unpatentable over Schoenbach et al. in view of U.S. Patent No. 5,810, 762 to Hofmann. Claims 3 and 4 ultimately depend from allowable claim 1 and are allowable as noted above.

Claims 5-6

Claims 5-6 have been noted as reciting allowable subject matter. Claims 5-6 have been canceled because of the incorporation of the subject matter of claim 5 into claim 1.

New claims 12-16

Applicants have added new claims 12-16 to this case. These claims are supported by the specification and are allowable over the cited and applied prior art patents of Schoenbach et al., Dorogi et al., and Hofmann. These new claims incorporate the subject of allowable claim 5. Allowance of new claims 12-16 is respectfully requested.

Timeliness of this Response

The Office Action had a three month response date of March 22, 2004. In view of the filing of this Response prior to that date, Applicants submit that no time extension and no fees therefore are required. Should Applicants be in error, Applicants request such time extension as necessary to make this Response timely and authorizes the Office to charge any fees or surcharges necessary to make this response timely and credit any overpayments to the Deposit Account of the undersigned firm, Deposit Account No. 502417.

Conclusion

In view of the foregoing amendments and remarks, Applicants respectfully believe pending claims 1-4, 7 and 12-16 are in condition for allowance. Reconsideration and withdrawal of the rejections of pending claims 1-11 in view of the art cited and applied by the Examiner, as well as the Remarks herein, and a Notice of Allowability to pending claims 1-4, 7 and 12-16 is respectfully requested.

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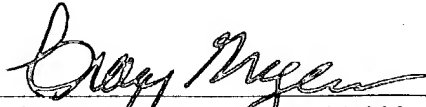
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